

Special Session

Agenda Item #	6
Meeting Date	July 6, 2004
Prepared By	Susan Silber, City Attorney
Approved By	Wayne Hobbs, Deputy Mgr.

Discussion Item	Approval of Employment Contract for new City Manager, Barbara Burns Matthews
Background	The City Charter empowers the Council to appoint a City Manager. A nationwide search was conducted with the participation of a “Citizen’s City Manager Search Committee.” Ms. Matthews was selected by the Council on June 1, 2004. Ms. Matthews will commence work July 12 th 2004.
Policy	
Fiscal Impact	\$105,000 per annum plus \$1,000.00 per month housing allowance and \$400 vehicle allowance. Moving and relocation expenses will be reimbursed.
Attachments	Contract is attached (It has been executed by Barbara Matthews)
Recommendation	Consider the proposed resolution and contract.
Special Consideration	

Introduced by:

Date:

**Resolution #2004-
Approving Employment Agreement between the City of Takoma Park
and Barbara Burns Matthews, as City Manager,
and Authorizing the Mayor to Execute Such Agreement**

WHEREAS, the City Council, on or about June 1, offered to employ Barbara Burns Matthews as City Manager and agreed to certain compensation and benefits for Ms. Matthews; and

WHEREAS, Ms. Matthews accepted the City's offer of employment as City Manager of the City of Takoma Park effective July 12, 2004; and

WHEREAS, the City of Takoma Park now wishes to enter into a written five-year employment agreement with Ms. Matthews providing for her to be the City Manager of the City of Takoma Park, Maryland.

NOW, THEREFORE, BE IT RESOLVED THAT the Council of the City of Takoma Park, Maryland, hereby approves the Employment Agreement between the City and Ms. Matthews as City Manager of the City of Takoma Park (the Employment Agreement to be in substantially the form of the agreement attached to this Resolution), and authorizes the Mayor to execute such Employment Agreement on behalf of the City of Takoma Park, Maryland.

Adopted this _____ day of _____, 2004.

Attest:

Catherine E. Waters, CMC
City Clerk / Treasurer

EMPLOYMENT AGREEMENT

This Agreement made and entered into this __ day of ____, 2004, by and between the City of Takoma Park, Maryland, a political subdivision of the State of Maryland, hereinafter referred to as the "City," as party of the first part; and Barbara Burns Matthews, hereinafter referred to as the "Employee," as party of the second part, both of whom understand as follows:

WITNESSETH

WHEREAS, the City desires to employ the services of Barbara Burns Matthews as City Manager of City; and,

WHEREAS, it is the desire of the Mayor and City Council of the City of Takoma Park, Maryland, hereinafter referred to as the "Mayor and Council" to provide certain benefits to, establish certain conditions of employment for, and to establish working conditions of said Employee; and,

FURTHER WHEREAS, Employee desires to accept employment as City Manager of the City of Takoma Park, Maryland.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. **Duties**

City hereby agrees to employ Barbara Burns Matthews as City Manager of the City of Takoma Park, to perform the functions and duties specified in the City Charter, and to perform such other legally permissible and proper duties and functions as the Mayor and Council shall from time to time assign.

Section 2. **Term**

A. This agreement shall be of a continuing nature with both parties sharing the goal that it last for at least five (5) years beginning July 12, 2004, and ending July 11, 2009. Both parties

also acknowledge the ICMA ethical standard that city managers should commit to serving no less than two years.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Mayor and Council to terminate the services of Employee at any time, subject only to the provisions set forth in the City Charter, and Section 3, paragraph B of this Agreement.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from Employee's position with the City, subject only to the provisions set forth in Section 2, paragraph E, of this Agreement.

D. This Agreement shall be effective upon its execution by both parties and Employee shall report for duty as City Manager for City not later than July 12, 2004.

E. In the event Employee voluntarily resigns Employee's position with the City, Employee shall give the Mayor and Council sixty (60) days written notice in advance.

F. Prior to January, 2009, the parties will meet and confer to decide whether this contract will be mutually extended beyond the fifth year. Any failure to meet or reach an agreement will not impact the severance pay provisions in Section 3.

G. This agreement may be extended during the initial five (5) years period or any extensions by the mutual consent of the parties for an additional period, the duration to be jointly determined by the parties.

Section 3. Termination and Severance Pay

A. If the Employee has been criminally charged or it is alleged that the Employee has engaged in misconduct clearly detrimental to the City, the Mayor and Council may, by majority vote, suspend the Employee with full pay and benefits, pending prompt investigation and

resolution, if it finds that continuation in her office pending the determination of these charges would compromise the public trust.

B. The Employee serves at the pleasure of the Council. In the event Employee is terminated by the Mayor and Council before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform her duties under this agreement, then in that event Employer will give Employee six months notice of that decision before its effective date, or at Mayor and Council's sole discretion, may pay Employee a lump sum cash payment equal to six (6) months base salary and continuation of all benefits except as limited in Section 3C below; provided, however, that in the event Employee is terminated because of her conviction of any illegal act or a determination of misconduct clearly detrimental to the City, then, in that event, Employer shall have no obligation to extend the six months notice or to pay the severance sum designated in this paragraph. Prior to any Mayor and Council decision to terminate Employee pursuant to this paragraph, Employee will receive notice and an opportunity to be heard.

C. In the event of termination as provided in Section 3, B above, the benefits provided as part of termination shall be those benefits that the Employee has at the time of termination, but shall not include the automobile, nor shall it include the continued accrual of personal leave. The housing allowance will also be included as part of the severance pay until the employee has begun new employment or her house has been sold, whichever occurs first, but only up to the six (6) or nine (9) months of the severance period.

D. In the event Employee is terminated within 90 days of a municipal election, and Employee has not received six (6) months notice of termination, Employee shall be entitled to nine (9) months severance pay (an additional three (3) months salary and benefits) to be paid as a lump sum unless otherwise agreed to by the City and Employee following Employee's termination. The

six (6) months or nine (9) months salary and benefits (unless specific benefits should not be duplicative, *e.g.*, health insurance), shall be an entitlement accrued under the conditions referenced herein and shall be paid without regard to whether the Employee has secured other comparable employment.

Section 4. Salary and Housing Allowance

City agrees to pay Employee for Employee's services rendered pursuant hereto a beginning base salary of \$8,750 per month (\$105,000 per annum), plus \$1,000 per month housing allowance. In addition, City agrees to increase said base salary and/or other benefits of Employee in such amounts and to such an extent that the Mayor and Council may determine that it is desirable to do so on the basis of an annual salary review of said Employee made at the same time as similar consideration is given employees generally.

Section 5. Automobile Allowance

Employee shall receive an automobile allowance of \$400 per month during Employee's employment with the City.

Section 6. Conflict of Interest

Employee shall be permitted to reasonably engage in such activities as teaching, writing, and professional consultation on Employee's time off so long as such activity is not in conflict with the interests of the City. The Mayor and Council shall be the sole judge of any conflict.

Section 7. Dues and Professional Development

The City agrees to budget and to pay the professional membership dues and professional development costs of Employee necessary for Employee's continuation and full participation in the International City and County Management Association and attendance at one national and one statewide conference of municipal management professionals per year.

Section 8.

Vacation Leave

Employee shall be credited with 10 workdays of vacation leave on the beginning date of Employee's employment with City and shall earn working days of vacation leave equivalent to a City management staff member with 18 years of service. These vacation leave days to be credited in the same manner as other management employees of the City. Subject to Sections 12 and 14 of this Agreement, in the event that City increases the amount of vacation leave available to executive personnel with City in an amount or at accrual rate which is greater than that set forth above, then Employee shall be entitled to the benefits of such change. Employee shall be permitted to carry over past the end of each calendar year an amount of vacation leave not to exceed the policy of City for other City employees; and in the event of Employee's leaving the employ of City by resignation or removal, Employee shall be entitled to compensation for all days of leave to Employee's credit in accordance with City policy.

Section 9:

Sick Leave

Employee shall be credited with 10 workdays of sick leave on the beginning date of Employee's employment with City and shall earn working days of sick leave on the same basis as other employees of the City. Subject to Sections 12 and 14 of this Agreement, in the event that City increases the amount of sick leave available to executive personnel with City in an amount or at accrual rate which is greater than that set forth above, then Employee shall be entitled to the benefits of such change. Employee shall be permitted to carry over past the end of each fiscal year an amount of sick leave not to exceed the policy of City for other City employees.

Section 10. Health, Dental, Vision, Life and Disability Insurance

During the term of Employee's employment with City, City agrees to provide the provisions of health, dental, vision, life and disability insurance to Employee on the same basis as it provides these benefits to other management employees of City.

Section 11. Retirement/Deferred Compensation

A. In lieu of participation in the State of Maryland Retirement Plan, City agrees to make an annual contribution equal to seven (7) percent of Employee's gross base salary on behalf of Employee to the City of Takoma Park Governmental Money Purchase Plan & Trust, a 401(a) plan administered by the ICMA Retirement Corporation.

B. Employer will place the pension contribution into an ICMA 401a plan with the following vesting schedule: 20% after the completion of one year employment; 40% after the completion of 2 years of employment; 60% after the completion of 3 years of employment; 80% after the completion of 4 years of employment; 100% after the completion of 5 years of employment. Employee will be deemed to have completed 5 years of employment if her employment is terminated involuntarily without cause at any time during this contract term.

Section 12. Other Benefits

Except as specifically provided for herein, Employee shall be provided at least the same benefits provided to executive management staff of City.

Section 13. Relocation Expenses

A. As additional compensation to Employee and to provide for the cost of job, family, and home relocation, City shall pay directly, for the bona fide, reasonable expenses of packing, unpacking, insurance, temporary storage and moving Employee, Employee's family, and Employee's personal property from her current residence in Des Peres, Missouri, to her new

residence in Takoma Park, Maryland. Employee agrees to solicit three bids and to retain the moving services of the lowest bid. In addition, City shall reimburse Employee for other relocation expenses, including temporary housing, in an amount not to exceed \$5,000.

B. All relocation expenses paid by the City to the Employee will be reimbursed by the Employee if she resigns from her position as City Manager before the end of two years.

Section 14. Performance Evaluations

Mayor and Council will evaluate the performance of Employee following six months of service with City and at least annually thereafter. This review and evaluation shall follow criteria and procedures determined by Mayor and Council. The parties agree that the primary purpose of such evaluation is to facilitate open and frank discussion, define roles and expectations, identify performance, strengths, and weaknesses, and to provide an opportunity for Employee to take affirmative action to address weaknesses and areas needing improvement.

Section 15. Indemnification

Employer shall defend, save harmless and indemnify Employee up to the limits and pursuant to the scope of its Primary Liability Insurance Policy with The Local Government Insurance Trust against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employer's duties as City Manager. Pursuant to the insurance parameters above, the Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

Section 16. Bonding

The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17. Other Terms and Conditions of Employment

A. Mayor and Council shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law.

B. All provisions of the City Charter, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other management level employees of City in addition to said benefits enumerated specifically for the benefit of Employee, except as herein provided.

Section 18. Arbitration

Any differences, claims, or matters in dispute arising between the parties out of this agreement or connected herewith shall be submitted by them to arbitration by the American Arbitration Association or its successor and the determination of the arbitrator shall be final and absolute. The arbitrator shall be governed by the duly promulgated rules and regulations of the American Arbitration Association or its successor, and the pertinent provisions of the laws of the State of Maryland, relating to arbitration. The decision of the arbitrator may be entered as a judgment in any court in the State of Maryland. The expense of such Arbitration shall be paid by the Employer.

Section 19. General Provisions

A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. This Agreement shall become effective upon its execution.

D. If any provision or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable, said provision, or portion thereof, shall not be affected, and shall remain in full force and effect.

E. This Agreement shall be interpreted pursuant to Maryland law.

IN WITNESS WHEREOF, The City of Takoma Park, Maryland has caused this Agreement to be signed and executed in its behalf by its Mayor and City Council and duly attested by the City Clerk, and the Employee has signed and executed the Agreement, both in duplicate, this date.

Barbara Burns Matthews

Kathy Porter

_____, Employee

_____, Mayor

ATTEST:

Witness

Cathy Waters, City Clerk

APPROVED AS TO FORM:

Witness

Susan Silber, City Attorney